

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3086 of 1998

to

FIRST APPEAL No 3105 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

EXECUTIVE ENGINEER

Versus

SPL.LAND ACQUISITION OFFICER

Appearance:

MR GHANSHYAM AMIN for Petitioner
NOTICE NOT RECD BACK for Respondent No. 1, 2
Mr.H.L.Jani AGP for respondents in FA Nos 3086 to
3095/98
Mr.M.R.Raval, AGP for respondents in FA Nos 3096 to
3105/98

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.H.KADRI

Date of decision: 05/03/99

(PER PANCHAL,J)

1. These appeals, which are instituted under section 54 of the Land Acquisition Act, 1894 read with Section 96 of C.P.C, are directed against the common judgment and award, dated February 13, 1998 rendered by the learned IInd Extra Assistant Judge, Kheda at Nadiad in Land Reference Case Nos 1632 to 1638, 1663 to 1666, 1876, 1881, 2153 and 2155 all of 1994. All the abovereferred to references were consolidated with Land Reference Case No.1637/94 and the parties had led common evidence therein. The lands of the claimants were placed under acquisition pursuant to the publication of preliminary notification, dated December 26, 1989 which was issued under section 4(1) of the Land Acquisition Act. As common questions of fact and law are involved in these appeals, we propose to dispose of them by this common judgment.

2. The Executive Engineer of Narmada Project for Main Canal had proposed to the State Government to acquire agricultural lands of village Menpura, Taluka Thasra, Dist.Kheda for the public purpose of Narmada Main Canal. On scrutiny of the said proposal, the State Government was satisfied that the agricultural lands of village Menpura were likely to be needed for the said public purpose. Accordingly, notification under section 4(1) of the Land Acquisition Act, 1894 ("The Act" for short) was issued which was published in the official gazette on December 26, 1989. The lands which were proposed to be acquired were also specified in the said notification. The land owners were served with notices under section 4 of the Act and they had filed their objections against the proposed acquisition. After considering the objections raised by the land owners, the Special Land Acquisition Officer, Narmada Project Unit 1, Baroda had forwarded the report to the State Government as contemplated under section 5A(2) of the Act to the State Government. On consideration of said report, the State Government was satisfied that the agricultural lands of vilage Menpura which were specified in the notification published under section 4(1) of the Act were needed for public purpose of Narmada Main Canal. Therefore, declaration under section 6 of the Act was made which was published in the official gazette on October 29, 1991. The interested persons were thereafter served with notices for determination of compensation. The claimants appeared before the Special Land

Acquisition Officer and claimed compensation at the rate of Rs.1,50,000/- per Hectare. The Special Land Acquisition Officer by his award, dated January 29, 1993 offered compensation to the claimants in Land Acquisition Case No.26/89 at the rate of Rs.300/-per reA, whereas in Land Acquisition Case Nos 27 & 29 of 1989 also he offered compensation at the rate of Rs.300/-per Are by award dated September 21, 1993. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was inadequate. Therefore they made applications in writing requiring the Special Land Acquisition Officer to refer the matter to the court for determination of compensation. Accordingly, references were made to the District Court Kheda at Nadiad which were numbered as mentioned in the earlier part of this judgment. In the reference application the claimants pleaded that having regard to the market value of the land situated near the acquired lands as well as income derived by the claimants from the sale of agricultural produces, they were entitled to enhanced compensation. It was claimed that before determining the market value of the lands of the claimants, the Special Land Acquisition Officer had not taken into consideration the fertility of the lands, crops raised on the lands, as well as income derived by the claimants from the crops and they should be paid compensation at the rate of Rs.10,000/-per Are. On behalf of present appellant as well as respondent No.1 reply at Exh.5 was filed controverting the averments made in the reference applications. In the reply, it was stated that the Land Acquisition Officer had taken into consideration the relevant factors before determining the market value of the lands acquired, and therefore, the reference applications should be dismissed. Upon rival assertions made by the parties, necessary issues for determination were framed by the reference court. To substantiate the claim advanced in the reference applications the claimants had examined witness-Mahebubmiya Yakubmiya Malek at Exh.10 and Kalidas Kodarbhai at Exh.27 Witness-Mahbubmiya is resident of village Padal, District Kheda and not of village Menpura. The witness stated in his deposition that in agricultural lands of village Padal the agriculturists were raising crops of Tobacco, paddy, millet, wheat etc. and were able to earn Rs.20,000/- to Rs.25,000/-per vigha by way of profits. The witness claimed in his evidence that the price of tobacco in the year 1889-90 was Rs.400/-per maund. The witness admitted in examination in chief itself that he had no documentary evidence with him to establish the sale of tobacco, but he produced certain certificates issued by a trader--Muljibhai Shankarbhai

Patel of Timbana Muvada at Mark 9/21 to 9/31. He also produced similar certificates issued by M/s R.L.Patel and Sons of Timbana Muvada at Mark 9/17 to 9/20. According to the witness, the certificates produced by him were in respect of the quantity of tobacco supplied to respective traders as well as price of tobacco per 20 Kgs. However, the author of the certificate were not examined. Therefore, the reference court did not exhibit them nor has relied upon the same while rendering the impugned judgment. The witness further claimed in his evidence that the claimants were also entitled to compensation for well situated in the acquired lands. In the cross examination the witness categorically admitted that he had no documentary evidence with him to establish the yield of the crop or the expenditure incurred by the claimants for raising the crops. The witness also admitted that he had no proof to establish the sale of paddy. Witness Kalidas Kodarbhai Patel who was examined at Exh.27 is resident of village Timbana Muvada. This witness in his evidence stated that he was serving as Accountant in M/s R.L.Patel & Sons and was writing books of accounts. The witness stated that in the year 1988-89 one Dhulabhai Zaverbhai Patel had sold the tobacco to the firm at the rate of Rs.381/-per maund whereas the firm had purchased the tobacco in the year 1989-90 at the rate of Rs.360/-per maund. The witness also claimed that one Waghjibhai Ramabhai Patel had sold tobacco to the firm in the year 1988-89 at the rate of Rs.395/-per maund. He produced the extract from the account books at Mark 9/17 to 9/20. This witness in his crossexamination admitted that in different villages different prices of tobacco prevail. He also stated in his crossexamination that in the year 1988-89 the price of tobacco per maund was between Rs.281/- to Rs.360/-.

3. Over and above examining the two witnesses, the claimants had also produced the deposition of expert-Mohanbhai Purshottamdas Brahmabhatt which was recorded in another Land Acquisition Case No.356/94 at Exh.11. The detailed data prepared by expert Mr.Mohanbhai with reference to lands of village Antroli was produced by the claimants at Exh.12 whereas the relevant page of award made by the Land Acquisition Officer in respect of lands of village Vanghroli was produced at Exh.13. The claimants had also produced village forms 7/12 at Exhs 14 to 24 to substantiate their claim that the lands acquired were irrigated lands. Copy of Krishi Jivan Jubilee magazine upon which the expert had based the detailed data was produced by the claimants

at Mark 9/3, whereas certified copies of price lists issued by the Kapadwanj Taluka Agriculture Produce Market Committee were produced at Exhs.25 & 26. On behalf of the present appellants and the Special Land Acquisition Officer copies of sale deeds were produced at Exhs 40 to 47 and valuation report of the tubewell was produced at Exh.48. The appellants also produced measurement of tubewell at Exh.49 and calculation relating to cost of tubewell at Exh.35 whereas copy of paragraph 104 of Land Acquisition Manual was produced at Exh.36. The appellants also produced village form No.16 at Exh.37.

4. On appreciation of evidence led by the parties, the reference court held that the saledeeds produced at Exhs 40 to 47 were not relevant for the purpose of determining the market value of the acquired lands as neither the vendor nor the vendee nor the scribe of any of the document was examined to present relevant factors such as voluntary nature of transaction, similarity of lands with the lands acquired, potentiality, etc. The reference court deduced that the evidence of witness-Mahboobmiya Yakubmiya Malek established that in village Menpura most of the farmers were raising paddy crop as well as wheat in second season as water for irrigation was available from other sources. Placing reliance on the evidence of said witness, the reference court further concluded that some of the agriculturists of village Menpura were cultivating the crop of Tobacco and in view of irrigation facilities available they were also taking crop of millet. According to the reference court, Exh.36, which was the true copy of paragraph 104 of the Land Acquisition Manual indicated that most of the claimants were growing the crops of tobacco, paddy etc in their lands which were placed under acquisition. In view of the above referred to conclusions the reference court observed that considering two different crops in two different seasons, the minimum price should be assessed as according to reference court the claimants had deposed that they were cultivating more than 3 to 4 crops in a year. The reference court observed that the claim advanced by the claimants that they were cultivating more than 3 to 4 crops in a year was not believable because village form No.7/12 indicated that they were taking only two crops like millet and tobacco or paddy and wheat etc. As the best method for determination of market value of the acquired lands in the form of sale deed of the acquired lands or of nearby land was not available, the reference court proceeded to determine the market value of the acquired lands on yield basis. While considering the question of yield, the reference court held that the average minimum annual yield of the paddy crop was more

than 4,000 Kgs per hectare whereas the average minimum annual yield of wheat was also more than 4,000 Kgs per hectare. So far as tobacco crop is concerned, the reference court held that the claimants were cultivating and getting minimum yield of 2,000 Kgs per hectare whereas the minimum yield millet was 3,000 Kgs per hectare. After determining the total yield of paddy, wheat, tobacco and millet, the reference court took into consideration the price of different crops as mentioned by the Kapadwanj Taluka Agricultural Produce Market Committee in Exhs 25 & 26 and held that the minimum price of wheat at the relevant time was Rs.3.75ps per KG whereas the price of millet was Rs.250/- per 100 KGs and that of the tobacco was Rs.350/-per 20 KGs. The reference court held that the price of wheat was Rs.375/-per 100 KGs. In view of the judgment of this court in the case of STATE OF GUJARAT vs RAMA RANA & ORS State of Gujarat vs Rama Rana & Ors, 1997 (3) GLR 1954 the reference court was of the opinion that the 50% of the value of the crop should be treated as the cost of raising cultivation and multiplier of 10 should be applied for the purpose of determination of market value of the acquired lands. In the ultimate decision, the reference court has awarded compensation to the claimants at the rate of Rs.1600/-per Are by the impugned award giving rise to the present appeals.

5. Mr.G.H.Amin, learned advocate for appellant submitted that the witness Maheboobmiya Yakubmiya Malek has not referred to in his deposition at all as to which crop was being cultivated by the agriculturists of village Menpura, and as the reference court has read the evidence of said witness in a perverse manner, the impugned judgment should be set aside. It was claimed that the deposition of socalled expert-Mohanbhai Purshottamdas Brahmhatt which was recorded in land acquisition case No.356/994 and which related to the lands of village Antroli could not have been exhibited nor could have been read in evidence without recording a finding that the said witness was incapable of giving evidence or was kept out of the way by the adverse party or it was not possible to secure his presence without delay and expenses and therefore the impugned award which is solely based on the said evidence should be quashed. Learned counsel for the appellant asserted that Exh.36 which is copy of paragraph 104 of the Land Acquisition Manual does not indicate at all that the agriculturists of village Menpura whose lands were acquired in the present case were cultivating the crop of tobacco and paddy nor any witness examined on behalf of the claimants has stated before the court that the yield of paddy crop

was more than 5,000 Kgs per hectare or that of wheat was 4,000 Kgs per hectare and therefore the finding recorded by the reference court regarding yield which are based on no evidence should be set aside by this court. It was claimed that no one was examined by the claimants to establish as to what was the price of tobacco, paddy, wheat or millet at the relevant time in village Menpura. Therefore, the market value of the acquired lands as determined by the reference court should be quashed.

6. Mr.A.J.Patel, Learned counsel for claimants submitted that as no better evidence was available the reference court was justified in determining the market value of the acquired lands on yield basis and therefore the appeals should be dismissed. However, on appreciation of evidence the learned counsel has conceded that the determination of total yield by the reference court as well as finding regarding prevailing prices of different crops at the relevant time is not borne out from the evidence on the record of the case at all.

7. We have heard the learned counsel for parties at length and we have also taken into consideration the record of the case. At the outset, we may mention that the method adopted by the reference court for the purpose of ascertaining the market value of the acquired lands is highly unsatisfactory. Before determining the market value of the acquired lands on yield basis, the reference court has not taken into consideration the relevant principles laid down by the Supreme Court as well as by this court in several reported decisions and more particularly the principles laid down by the Supreme Court in the case of Special Land Acquisition Officer vs P.Virabhadrapa etc reported in AIR 1984 SC 774. We have carefully gone through the evidence of witness-Maheboobmiya Yakubmiya Malek who was examined at Exh.10. As observed earlier the witness is resident of village Padal and not of village Menpura. In his deposition he has not stated a word as to which crop was being cultivated by which agriculturist of village Menpura. Witness has not given any particulars regarding yield of wheat, tobacco, millet etc in village Menpura. The said witness has also not stated anything about the price of different crops which were prevailing at the relevant time in village Menpura. To say the least, the reference court has read the evidence of witness illegally and drawn the conclusions which are not warranted by the facts of the case at all. As noticed earlier, only one witness-Maheboobmiya Yakubmiya Malek was examined on behalf of all the claimants. Before determining the market value of the acquired lands the

reference court did not scrutinise the evidence of the said witness carefully at all. The finding recorded by the reference court that the evidence led on behalf of the claimants indicates that the claimants were raising two crops in a year is not only contrary to the record but totally unjustified. It was never claimed by witness Maheboobmiya Yakubmiya Malek that each claimant was able to take two crops in a year from his land. The revenue record would indicate that an agriculturist was raising one crop in one area of his farm and another crop in another area but the record does not indicate that any claimant was raising or taking two crops in a year. Therefore, basis for determination of market value of the acquired lands adopted by the reference court is factually wrong. We further notice that the evidence of expert Mohanbhai Purshottamdas Brahmabhatt which was recorded in land reference case No.356/94 in relation to lands of village Antroli could not have been exhibited in this case without recording satisfaction as contemplated by section 33 of the Evidence Act. Section 33 of the Evidence Act reads as under:

"Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated-- The Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead, or can not be found or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence can not be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable:--

Provided:--

That the proceeding was between the same parties or their representatives in interest;

that the adverse party in the first proceeding had the right and opportunity to cross-examine;

that the questions in issue were substantially the same in the first as in the second proceeding.

A bear reading of the abovereferred to provision makes it

clear that the evidence given by a witness in a judicial proceeding can be admitted in subsequent judicial proceeding provided that the witness is dead or can not be found or is incapable of giving evidence or is kept out of the way by the adverse party or if his presence can not be secured without an amount of delay or expense. The record does not indicate that any satisfaction as contemplated by section 33 of the Evidence Act is recorded by the reference court before exhibiting deposition given by the witness Maheboobmiya in another case. Under the circumstances, the evidence given by Maheboobmiya in Land Acquisition Case No.356/94 could not have been exhibited or read in evidence in this case. No cogent and reliable evidence has been led by the claimants to establish that what was the yield of particular crop or what was the price of the said crop at the relevant time. It becomes clear that the reference court while determining the market value of the acquired lands has not only referred to but also relied upon the inadmissible evidence making the award vulnerable. Having regard to the totality of the facts and circumstances of the case, we are of the view that the ascertainment of market value of the acquired lands by the reference court is not justified at all and can not be upheld by this court. The same therefore will have to be set aside.

8. In normal circumstances, we would have remanded the matters to the reference court with liberty to the parties to lead evidence in the matter to enable the reference court to determine the market value of the acquired lands. However, remittance of matters at such a distance of time is likely to cause prejudice to the claimants as well as to the acquiring authorities as it may not be possible for the parties now to adduce reliable evidence before the court to enable it to determine the market value of the acquired lands. The Supreme Court has emphasised in several reported decisions that the evidence on the record should be scrutinised critically and an attempt must be made by the courts to determine the market value of the acquired lands in cases of compulsory acquisition of lands. The learned counsel for the parties have drawn the attention of this court to certain other documents on record on the basis of which the market value of the acquired lands can be ascertained by the court, and therefore, instead of remitting the matters to the reference court we will endeavour to determine the market value of the acquired lands in these appeals.

9. On behalf of present appellants, a statement is

produced giving necessary particulars in relation to the lands of village Menpura which were acquired for the Narmada Main Canal. It is at page 151 of the paper book prepared by the learned counsel for the appellants. Mr.A.J.Patel, Ld.Senior Advocate has, on instructions, made an endorsement on the said statement that it be exhibited and its contents be read in evidence while deciding the present group of appeals. Accordingly the statement is exhibited and numbered as Exh.76. On page 66 of the paper book the claimants have produced extracts from account books of M/s R.L.Patel written by the witness-Kalidas Kodarbhai Patel. Some of them are exhibited and others are not exhibited. The extract from the account books which is at page 66 indicates the sale of tobacco by the farmers of village Menpura as well as the price at which the same was sold to the firm of M/s R.L.Patel. The Ld.counsel for appellants on instructions has made an endorsement on the extract from the account books which is at page 66 to the effect that it be exhibited and its contents be read in evidence while deciding the appeals. Therefore, the extract from the books of accounts which is at page 66 is exhibited and numbered as Exh.77. Item No.23 of Exh.76 indicates that the maximum yield of tobacco crop which could have been obtained in the year 1989 was 48 maunds per acre. This data was obtained by the Government after conducting several experiments. As per the data provided in Exh.76 the maximum yield of tobacco was 48 maunds per acre i.e. 960 Kgs per acre. Therefore, the yield per hectare would be 2371.20 Kgs. Column No.31 of Exh.76 shows Aannavari, i.e. percentage of crop for different years and it is mentioned therein that the aannavari of the crop i.e. percentage of the crop for the year 1988-89 was 9.2%. If the method of ratio proportion is adopted the estimate yield of tobacco obtained by a farmer can be determined to be 1363 KGs per hectare because the percentage of the crop of tobacco for the year 1988-89 was 9.2%. This state of affairs is admitted by the learned counsel for the claimants. Exh.77 which is the extract from the books of accounts shows that average of price of tobacco was Rs.17/-per KG. Therefore, in order to determine gross agricultural income from tobacco gross yield will have to be multiplied by average price of the tobacco which would come to Rs.23,171/- per hectare. It is well settled by catena of decisions of the Supreme Court that while determining the market value of the acquired lands on yield basis 50% should be deducted as costs of cultivation and multiplier of 10 be applied. If the formula suggested by the Supreme Court in several reported decisions is applied to the facts of the present case, market value of the lands acquired would come to

Rs.1,15,850/per hecrare, i.e. Rs.1,158.50ps per Are. Having regard to the facts and circumstances of the case, we conclude that it would be safe to determine the market value of the acquired lands at Rs.1,150/-per Are. Exhs 76 & 77 which are admitted and red in evidence with the consent of parties would indicate that the claimants are entitled to compensation at the rate of Rs.1,150/- per Are on yield basis. The award, therefore, rendered by the reference court will have to be modified accordingly.

10. For the foregoing reasons, all the appeals partly succeed. It is held that the claimants would be entitled to compensation at the rate of Rs.1,150/-per RA. Rest of the directions given by the reference court regarding additional amount of compensation under section 23(1-A) of the Act, solatium and interest are not disturbed and are hereby upheld. There shall be no order as to costs in each appeal. It is hoped that the amount which may be found payable to the claimants would be paid to them as early as possibler and without any avoidable delay.

11. We make it clear that the judgment in these appeals is rendered with the specific concession of the claimants and broad consensus of the present appellants. Therefore, it shall not be treated as precedent in anyother case. The office is directed to draw decree in terms of this judgment.

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